

### REMARKS

This responds to the Office Action mailed on October 18, 2007.

No claims are amended, or are canceled, or are added; as a result, claims 1, 7, 9, 11-12, 14 and 16 are now pending in this application.

#### §103 Rejection of the Claims

Claims 1, 7, 9, 11-12, 14 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over NOWTHIS.COM (NOWTHIS.COM, blog entry, Nov. 24, 1999; hereinafter "NowThis") in view of Nielsen (U.S. 6,789,075).

The rejection rests primarily on the Office Action's reliance upon a blog document (referred to in the Office Action and herein as the NowThis document) which includes a statement:

"1 people found this review helpful. 0 did not. Was it helpful to you? [YES] {NO}"

that also suggested "...Amazon is getting into the ratings-rating business." No further description or details of any actual system were provided. No further evidence was referred in either the entry or in the Office Action to show that there ever was an Amazon "ratings-rating" system as referred to, much less one where a receiving database performs an action of

"..incrementing a count of a stored number of indications for the review (1) in response to the indication and (2) if the stored number of indications does not exceed one indication for the review from the user..."

as claim 1 and the other independent claims require.

The Office Action seeks to remedy the lack of evidence of obviousness by reading far more into the NowThis document than is justified:

"This (sic NowThis) specifically provided interactive element features as claimed, count tabulation, and since the sentence references 'x people', it can be presumed that each person is entitled to only a single vote, since a second vote from the same person would not increase the number of 'people' referenced<sup>1</sup>."

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<sup>1</sup> Office Action of October 18, 2007, page 4, last line through page 5, line 3.

Applicants respectfully traverse the contention that the brief quote from NowThis supports a presumption that the reference to "people" rather than "votes" somehow requires that each person be entitled to only one vote. While Applicants agree in principle that limiting a person/voter to one vote may have been a concern since the earliest of elections known to mankind, the creation of workable systems to do so has been an ongoing concern.

Applicants submit that it is not obvious to convert a desire for allowing just one vote per person/voter into a working system assuring such a laudable outcome. The citation in the Office Action of four patents having varied mechanisms to accomplish that goal is not evidence that one of ordinary skill in the art would inherently be likely to modify the NowThis document with the specific features of claim 1 sending the error message to the user and counting the response only if the stored response indications does not exceed one indication for the review from the user. Much less does the analysis in the Office Action support a contention that NowThis limits a person to only one vote by "incrementing a count of a stored number of indications for the review if the stored number of indications does not exceed one indication for the review by the user", as claimed. The fact that none of the cited patents were deemed by the Office Action to show the claimed "incrementing a count" feature is believed by the Applicants to be strong evidence that one of ordinary skill in the art would not be led to solve the one vote per person issue as claimed in claim 1.

The Office Action appears to concede that the NowThis document does not show a system where the count was incremented only when a user reviews something for the first time. Even if one were to concede NowThis is limited to a one vote per user system, there is absolutely nothing in NowThis providing details of a system to assure that each person is entitled to only a single vote. The Office Action seeks to remedy the absence of such a disclosure by building a network of "would have been obvious" conclusions.<sup>2</sup> Applicants have previously challenged such a taking of official notice and the improper viewing of NowThis through the lens of Applicants' invention to conclude that it would have been obvious to provide the limitations in claim 1 to a structure for "sending an error to the user if the interactive element is clicked more than once by the user for review."

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<sup>2</sup> Office Action *supra*, paragraphs 10 - 12, pages 5 and 6.

The Office Action also relies upon Nielsen 6,789,075. That patent relates to ranking objects having "priority attributes" to sort objects with a high priority to the top of a file and those with a lower priority lower (col 7, lines 24-41). Applicant notes that sorting by a "priority attribute" in Nielsen is not the same as "sorting reviews in ascending or descending order as a function of the number of indications tallied for each review," as claim 1 requires. There is nothing in Nielsen or the NowThis document that would suggest to one of ordinary skill in the art that "sorting by priority attributes in Nielsen" could be combined with the NowThis document and a "one man one vote" aspiration to arrive at the invention of claim 1 and particularly the sorting "as a function of the number of indications tallied for each review" and the incrementing the count of the stored number only if the stored number of indications does not exceed one indication for the review from the user. The Office Action has failed to make a plausible prima facie case for combining the cited features from the two cited documents and the evidence of which the Office Action takes official notice.

Reconsideration and allowance of the rejected claims is requested.

Claims 1, 7, 9, 11-12, 14 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Epinions ([WWW.EPINIONS.COM](http://WWW.EPINIONS.COM), Oct. 12, 1999) in view of Salas et al. (U.S. 6,230,185; hereinafter "Salas"), and further in view of Nielsen.

In this rejection, the Office Action looks to Salas as a secondary reference for the limitations in claim 1 concerning incrementing the count only when "the number of indications does not exceed one indication from the user." Salas provides a mode of operation "to control the number of votes to be cast by any member." Salas does this by comparing the identity of the user to the list of users who have already responded (col 16, lines 56-61). The comparison in Salas is not the same as called for in claim 1 where the determination is made at the user level of how many indications there are that the user has clicked the interactive element. Since Salas does not provide a disclosure of the limitation on incrementing the count, even if the proposed combination with EPINIONS and Nielsen were proper, the combination fails to show all of the features of claim 1.

The Office Action's reliance upon Nielsen as a secondary reference as to the "displaying the reviews in the sorted order" as "a function of the number of indications tallied for each

review" fails for the same reasons pointed out with respect to the above rejection that was based primarily on the NowThis document. Nielsen does not disclose a system for ordering based on the number of instances tallied. Nielsen's data is ordered based on priority indications. Nielsen cannot be combined with Epinions/Salas without further modification which has not been shown to be obvious to one of ordinary skill in the art.

Reconsideration and allowance of the rejected claims is requested.

Claims 1, 7, 9, 11-12, 14 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klingman (U.S. 5,950,172) in view of Nielsen.

Applicants traverse the Office Action's assertion that Klingman discloses all of the features of the claims except reviewing of reviews<sup>3</sup> and sorting the reviews<sup>4</sup>. For one example of a distinction between what is claimed and what may be referred to in the relied upon portions of Klingman; Klingman does not disclose<sup>5</sup> "sending an error to the user if the interactive element is clicked more than once by the user for the review." Although the portion of Klingman relied upon in the Office Action does check to see whether the "caller ID" of the user remains in the "BUY server" list before updating scoring information, the Klingman system does not disclose a feature determining "whether an interactive element is clicked more than once by the user for the review."

In addition to Klingman failing to disclose all of the elements of claim 1 that the Office Action asserts are disclosed in it, the secondary Nielsen reference fails to provide either the missing features from Klingman or the features attributed to it in the Office Action. As pointed out previously in the response to the other rejection (above) relying upon Nielsen, Nielsen fails to show a system sorting "as a function of the number of indications" as claim 1 requires. Nielsen sorts based upon a priority attribute other than "the number of indications" so that Nielsen cannot be properly combined with Klingman to reject the claims.

Reconsideration and allowance of the rejected claims is requested.

#### Reservation of Rights

<sup>3</sup> See Office Action *supra*, paragraph 26, pages 10-11.

<sup>4</sup> See Office Action *supra*, paragraph 27, page 11.

<sup>5</sup> The Office Action *supra*, states that this is in Klingman at column 1, lines 1-28.

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6970 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 02/19/2008

By 

Reg. No. 25,179

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19<sup>th</sup>, day of February 2008.

Dawn R. Shaw

/Dawn R. Shaw/

Name

Signature